

CAMBRIDGE PUBLIC HEALTH DEPARTMENT



Cambridge Health Alliance

May 28, 2014

City Manager Richard C. Rossi:

The proposed amendments to the Tobacco Ordinance (Chapter 8.28, *Restrictions on Youth Access and Sale of Tobacco Products and on Smoking in Workplaces and Public Places*) that accompany this letter are the result of extensive review by successive advisory committees that engaged both municipal and public stakeholders. Although Cambridge was an early statewide leader in 2003 when the City Council adopted this ordinance, which established restrictions on public use and purchase of tobacco, the landscape of tobacco regulation has changed in the last several years.

In July 2013 the City Manager submitted several proposed amendments to the ordinance (letter of transmittal in this packet) adding new restrictions on smoking in public places, including parks and open space, hotels and inns, and outdoor seating areas. At the request of City Council, the amendment packet also included a prohibition on tobacco sales in all healthcare institutions, including pharmacies. These proposed changes were referred to Ordinance Committee.

At the further request of City Council in the fall of 2013, an expansion of the domain of the current ordinance to further regulate Nicotine Delivery Products (NDPs) such as electronic cigarettes was added to the list of amendments. This expansion addresses a significant gap in regulation, since such devices were not covered by the tobacco ordinance of 2003. No further action was taken by the Ordinance Committee before the end of the previous City Council term, so these amendments remained in draft form. In March of this year a provision to increase the legal age to purchase tobacco was requested by City Council and added to the list of amendments to the ordinance that are captured in the accompanying draft.

Finally, after a comprehensive review of tobacco policies not already addressed in the amendments thus far, several provisions have been added in the accompanying draft to prohibit tobacco products that have been used to specifically appeal to younger customers (single-serve cigars, flavored tobacco, blunt wraps), or are intended to circumvent certain tobacco levies (commercial roll-your-own machines). By imposing minimum pricing standards for single cigars (often flavored) this “loss-leader” strategy that has been used by tobacco manufacturers is neutralized within the City of Cambridge. By prohibiting flavored tobacco products (excluding mentholated varieties and allowing such sales in specialty tobacco shops) another well-recognized enticement to younger customers is eliminated without impacting the great majority of adult smokers. Blunt wraps have been identified as primarily used for the consumption of marijuana and further draws young residents into the tobacco market. This tobacco industry strategy targeting teenagers and pre-teens has been recognized nationally, but since the FDA is



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limited in its regulatory authority over tobacco, there has been no corresponding national regulatory response to this assault on the lifetime health of these young smokers.

In summary, with the assistance and cooperation of the members of the City Council and the Tobacco Advisory Committee, and the support of the Massachusetts Municipal Association and the 6-City Tobacco Control Collaborative (which includes Cambridge), we propose the following amendments to Chapter 8.28:

- 1) Prohibition on smoking in all parks and municipal open space
- 2) Prohibition on smoking in all rooms at inns, hotels, motels and bed-and-breakfast establishments
- 3) Prohibition on smoking in all outdoor seating areas adjacent to restaurants where food is served
- 4) Regulation of all e-cigarette and other nicotine delivery product (NDP) sales under the same restrictions as combustible tobacco
- 5) Prohibition on tobacco or NDP sales in all healthcare institutions (including pharmacies & drug stores, clinics or health centers)
- 6) Prohibition on sale of tobacco or NDPs to anyone under the age of 21
- 7) Restrictions on pricing and packaging for cigars (8.28.030, Section H)
- 8) Prohibition on sale of blunt wraps
- 9) Prohibition of all Commercial Roll-Your-Own machines
- 10) Restriction on sale of flavored tobacco (with an exemption for tobacconists)

These proposed amendments reflect an increasing concern over industry strategies that target younger individuals. After years of declining smoking rates, such sophisticated and targeted marketing efforts to expand the market for tobacco has shown troubling signs of success. The other area of significant progress represented by these changes is the protection of non-smokers from second-hand smoke in places that form part of the public enjoyment of our community. While continuing to take a thoughtful, evidence-based approach to policy development, Cambridge has an opportunity to catch-up to other communities across Massachusetts and the country and to continue to serve as a standard-bearer in strong local public health policy.

Best regards,

Sam Lipson
Director of Environmental Health

cc: Claude-Alix Jacob, Chief Public Health Officer



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Cambridge Health Alliance

July 24, 2013

Honorable Members of the Cambridge City Council,

In March 2011, in response to a City Council request to review the status of smoking in public parks (Council Order #9, 10/4/2010), the City Manager convened a Smoking in Parks working group. This *ad hoc* committee met 5 times over the next 18 months in order to review municipal policy options, enforcement concerns, and published evidence of health risks from exposure to second-hand tobacco smoke under various circumstances. Members of that working group, including representatives from Police, Public Works, Inspectional Services, Human Service Programs, Law, and Public Health, were led by the Deputy City Manager. Public Health staffed this process and offered research on related topics to committee members. Outside stakeholders were also invited to attend the work group for one or more meetings. These attendees included a representative from the MIT Medical facility's Wellness program, a prominent Cambridge-based smoker's rights advocate, a Cambridge-based air quality policy expert, and a smoking policy visiting scholar at Harvard's Kennedy School of Government.

Discussion and review of municipal policies adopted in New York City, Boston, and several West Coast communities informed the discussion and led the committee to agree on several changes to the existing tobacco control ordinance (Chapter 8.28, *Restrictions on Youth Access to Tobacco Products, and on Smoking in Workplaces and Public Places*).

Final recommendations took into account the practical enforcement of these changes and led the committee to acknowledge the difficulty associated with the designation of specific parks or playgrounds as non-smoking. It was accepted by consensus that this should be considered to be a complaint-driven ordinance as active enforcement is highly impractical. Proper signage and a dedicated effort to educate park and playground users were thought to be keys in getting general public cooperation with this policy change. Furthermore, it was also agreed that we should institute a reasonable period of time (6 months or one year) during which no fines would be issued and significant public education efforts will be conducted in and around city parks and other open spaces. Final enforcement remains in the hands of several municipal departments, though police may serve as the enforcer of last resort.

It was also recognized that a smoking prohibition in outdoor public spaces was likely to have only modest impact on unwanted exposures to smoke without also reviewing smoking restrictions in other crowded, confined or indoor public spaces. A review of restrictions placed on smoking in hotels, motels and inns and on smoking in outdoor seating areas of restaurants (both part of the City of Boston smoking regulations) was included in the suggested amendments herein.

Finally, in January 2013 City Council requested a review of the policy that allows tobacco to be sold in pharmacies, drug stores and other healthcare facilities. City Council members recognized that several dozen municipalities in Massachusetts had already instituted bans on tobacco sales in



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all locations that employ healthcare professionals and requested a review of such a policy for Cambridge.

In order to establish an appropriate process for reviewing all City of Cambridge policies on tobacco sale and use the Cambridge Public Health Department proposed that a regular Tobacco Advisory Committee be constituted for this purpose. This newly convened committee, with representatives from city departments already included in the Smoking in Parks working group, was expanded to include representatives from the Tourism Board, MIT, Harvard, Cambridge Public Schools, Cambridge Housing Authority, and the Six-Cities Tobacco Control Program (which includes Cambridge). After two meetings this committee considered the prohibition on tobacco sales in pharmacies and healthcare institutions adopted in other communities and agreed that this was an appropriate policy for Cambridge as well.

Please find attached the amended draft of the Cambridge tobacco control ordinance, now renamed *Restrictions on Youth Access and Sale of Tobacco Products and on Smoking in Workplaces and Public Places*, with changes intended to reflect the consensus recommendation of the Smoking in Parks work group and the now constituted Cambridge Tobacco Advisory Committee. The City Manager intends to distribute the enclosed draft ordinance amendments to impacted community stakeholders including the Chamber of Commerce, Tourism Board, Housing Authority and local business associations to make them aware of the new restrictions to be considered, so if they have comments or wish to attend future meetings, they may do so.

Best Regards,

A handwritten signature in black ink, appearing to read "Sam Lipson".

Sam Lipson
Director of Environmental Health

cc: Claude-Alix Jacob, Chief Public Health Officer



CHAPTER 8.28

Restrictions on Youth Access and Sale of Tobacco Products and on Smoking in Workplaces and Public Places

- 8.28.010 Declaration of Legislative Findings
- 8.28.020 Definitions for ~~Youth Access of Minors to~~ Access and Sale of Tobacco Products
- 8.28.030 ~~Youth Access of Minors to~~ and Sale of Tobacco Products
- 8:28.040 Enforcement and Violations
- 8:28.050 Definitions for Prohibition of Smoking in the Workplace
- 8:28.060 Prohibition of Smoking in the Workplace
- 8:28.070 Enforcement and Violations
- 8:28.080 Definitions for *Prohibition* on Smoking in Public Places
- 8:28.090 *Prohibition* of Smoking in Public Places
- 8:28.100 Enforcement and Violations
- 8:28.110 Definitions for *Prohibition* on Smoking in Restaurants
- 8:28.120 *Prohibition* of Smoking in Restaurants
- 8:28.130 Enforcement and Violations
- 8:28.140 *Invalidity of Provisions*
- 8.28.150 *Conflict with Other laws or Regulations*
- 8.28.160 *Implementation*

8.28.010 Declaration of Legislative Findings

The City Council finds and declares that the purposes of this Chapter are to protect public health, safety and general welfare by:

- A. Preventing access to tobacco products by ~~minors~~ people under twenty-one (21) years of age;
- B. Creating a permitting process for tobacco sales to facilitate enforcement of this chapter;
- C. Prohibiting smoking in workplaces and most other public places.

I

8.28.020. Definitions for ~~Youth Access of Minors to~~ Access and Sale of Tobacco Products:

For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this section:

Blunt wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

Cambridge Public Health Department: the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.

Characterizing Flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted either prior to or during consumption of a tobacco product or component part thereof, including but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings that do not contribute to the distinguishable taste or aroma or because of the provision of ingredient information.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

City: The City of Cambridge.

Commercial Roll-Your-Own (RYO) machine: A mechanical device, by whatever manufacturer made and by whatever name known, located in a business or used for sale or distribution of tobacco that is designed to roll and wrap tobacco into products. RYO machines located in a private home, used for personal consumption, are not Commercial Roll-Your-Own machines.

Component Part: Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

Constituent: Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture or packing of the tobacco product. Such term shall include a smoke constituent.

Distinguishable: Perceivable by either the sense of smell or taste.

E-Cigarette: Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, ecigars, e-pipes or under any other product name.

Flavored Tobacco Product: Any tobacco product or component part thereof that contains a constituent that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is flavored.

Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112. Health care institution includes hospitals, stand-alone clinics, in-store clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.

Self Service Display: Any display of tobacco products which is so located such that said products are accessible to customers without assistance from an employee or store personnel.

Inspectional Services Department: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code, local zoning laws and certain articles of the State Sanitary Code.

Minor: Any individual who is under the age of eighteen (18).

Nicotine Delivery Product: Any manufactured article or product made wholly or in part of a tobacco substitute or otherwise containing nicotine that is expected or intended for human consumption, but not including a tobacco substitute prescribed by a licensed medical provider or a product that has been approved by the U.S. Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery products include, but are not limited to, e-cigarettes.

Person: A person, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products.

Retail Tobacco Store: An establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Cambridge Public Health Commission (dba/Cambridge Public Health Department).

Self Service Display: Any display of tobacco products which is so located such that said products are accessible to customers without assistance from an employee or store personnel.

Vending Machine: Any automated, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.

Tobacco Product: Cigarettes, cigars, chewing tobacco, pipe tobacco, nicotine delivery product, snuff or tobacco in any of its forms.

Health care institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112. Health care institution includes hospitals, stand-alone clinics, in-store clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.

Tobacco product: Cigarettes, cigars, rolling papers, chewing tobacco, pipe tobacco, nicotine delivery product, snuff or tobacco in any of its forms.

Youth: Any individual who is under the age of twenty-one (21) years.

8.28.030 Youth Access of Minors to and Sale of Tobacco Products:

A. Prohibition Against Sales of Tobacco to Youths/minors prohibited:

1. No person shall sell tobacco products or permit tobacco products to be sold to a minoryouth or, not being the minoryouth's parent or guardian, no person shall give tobacco products to a minoryouth.
2. No person shall sell or permit the sale of tobacco products unless the location at which the tobacco products are available for purchase is posted with a notice which is clearly visible to anyone purchasing such products and which states: "~~Massachusetts state law prohibits the sale of tobacco products to any person under the age of eighteen (18) years of age. See M.G.L. chap. 270, sect. 6.~~" Said notice shall be that notice provided by the Massachusetts Department of Public Health and is "The City of Cambridge, by Chapter 8.28 of the Cambridge Municipal Code, prohibits the sale of tobacco products to any person under the age of twenty-one (21) years." Said notice shall be available from the Cambridge Public Health Department.
3. Each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than ~~eighteen (18)~~twenty-one (21) years of age. No such verification is required for any person over the age of 26.

B. Prohibition Against the Sale of Tobacco Products by Health Care Institutions

No health care institution located in the City of Cambridge shall sell or cause to be sold tobacco products. Additionally, no retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products.

CB. Tobacco sales permit:

1. No person shall sell tobacco products within the City of Cambridge without first obtaining a tobacco sales permit issued by Inspectional Services.
2. As part of the application process, the applicant will be provided with instructions on compliance with G.L.c.270 section 6 (sales of tobacco to minors and penalties for violation thereof), a copy of this ordinance and compliance with this chapter.
3. Each applicant is required to sign a statement declaring that the applicant has read said instructions and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding the law.
4. The fee for a tobacco sales permit shall be determined by the Commissioner of Inspectional Services. All such permits shall be renewed annually on July 1.
5. A separate permit is needed for each location.
6. Each tobacco sales permit shall be displayed on the premises in a conspicuous place.

DC. Free distribution. No person shall, in or upon any part of the streets, parks, public grounds, public buildings or other publicly owned places within the City of Cambridge, distribute free of charge any products containing tobacco or any coupons or vouchers for free tobacco products, to any person for any promotional or other commercial purposes.

ED. Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited. No manufacturer,

distributor or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty cigarettes.

FE. Self Service Displays. All self-service displays of tobacco products are prohibited. The only exception is self service displays that are located in facilities where the retailer ensures that no person younger than ~~eighteen (18)~~twenty-one (21) years of age is present, or permitted to enter, at any time.

GF. Tobacco Pproducts Vvending Mmachines: No person shall distribute or sell tobacco products by the use of a vending machine unless:

1. The vending machine is located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases are observable and controllable as if the tobacco products were sold over the counter;
2. All tobacco products vending machines must display a conspicuous sign stating that it is illegal for ~~minors~~youth under the age of twenty-one (21) years to purchase cigarettes; and
3. The vending machine is located in facilities where the retailer ensures that no person younger than ~~eighteen (18)~~twenty-one (21) years of age is present, or permitted to enter, at any time.

H: Cigar Sales Regulated:

1. No retailer, retail establishment, or other individual or entity shall sell or distribute or
2. cause to be sold or distributed a cigar unless the cigar is contained in an original package of at least four (4) cigars.

This Section shall not apply to:

- a. The sale or distribution of any cigar having a retail price of more than two dollars and fifty cents (\$2.50).
- b. A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of the City..
- c. Retail Tobacco Stores

I: Prohibition on the Sale of Blunt Wraps:

No person shall sell or distribute blunt wraps in the City

J: Commercial Roll-Your-Own Machines

All commercial roll-your-own machines are prohibited.

K: Sale of Flavored Tobacco Prohibited:

No retailer, or other individual or entity shall sell or distribute or cause to be sold or distributed or offer for sale any flavored tobacco to a consumer. This provision shall not apply to a retail tobacco store.

8.28.040. Enforcement and penalties:

A. Noncriminal Disposition. The penalty for each violation of 8.28.030 paragraph A shall be a fine of one hundred dollars (\$100.00) for the first offense, two hundred dollars (\$200) for the second offense and three hundred dollars (\$300) for the third and each subsequent offense within a twenty-four month period. The permit holder is responsible for payment of the fine. Any fines imposed under the provisions of this chapter shall inure to the City of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

B. The Commissioner of Inspectional Services may suspend a tobacco sales permit granted pursuant to this ordinance upon determination that a permit holder has committed three (3) violations within twenty-four months, calculated from the date of the first offense. The Commissioner of Inspectional Services shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefore, in writing. The Commissioner of Inspectional Services, after a hearing, may suspend the tobacco sales permit for up to four weeks. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this chapter.

C. Any permit holder who does not have an appeal pending and does not pay a fine within twenty-one days may be subject to the revocation of the tobacco sales permit granted pursuant to this chapter. The Commissioner of Inspectional Services shall provide notice of the intent to revoke a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may revoke the tobacco sales permit until the fine is paid. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this ordinance.

D. A violation of any provision of this chapter other than 8.28.030 paragraph A shall be subject to a fine of twenty-five dollars (\$25) which may be enforced by Noncriminal Disposition as stated in 8.28.040.section A. Every day in which a person engages in conduct prohibited by this chapter shall constitute a single and separate violation. Any fines imposed under the provisions of this chapter shall inure to the City of Cambridge.

E. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Department.

8.28.050 Definitions for Prohibition of Smoking in Workplaces:

For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Agent or Business Agent: *An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.*

Cambridge Public Health Department: the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.

City: the City of Cambridge.

Employee: Any individual person who performs services for an employer.

Employer: An individual person, partnership, association, corporation, trust, or other organized group of individuals, including the City of Cambridge or any agency thereof, which utilizes the services of one (1) or more individual employees, with or without compensation.

Enclosed Area: A space bounded by walls and under a roof or ceiling.

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.

Private Club: *A not-for-profit establishment created and organized pursuant to M.G.L. Ch. 180 as a charitable corporation with a defined membership. A private club is not a place of public accommodation but rather distinctly private. Criteria used to determine whether a club is distinctly private include, but are not limited to, those factors identified in 204 CMR 10.02. If a private club holds an alcoholic beverage license, said license shall be a "club license" or a "war veterans club license" as defined by M.G.L. Ch. 138, Sec. 12 and by the Massachusetts Alcohol Beverage Control Commission. Said license is subject to the terms set forth by the local licensing authority*

Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.

Tobacco Product: Cigarettes, cigars, chewing tobacco, pipe tobacco, snuff, or tobacco in any of its forms.

Workplace: *Any enclosed area of a structure or portion thereof at which one (1) or more employees perform services for their employer. Workplace includes hallways, stairwells, lobbies, elevators and restrooms.*

8.28.060 Prohibition of Smoking in Workplaces.

A. *Smoking is prohibited in all Workplaces, including private clubs.*

B. It shall be unlawful for any employer or other person having control of premises upon which smoking is prohibited by this chapter, or the agent or designee of such person, to permit a violation of this chapter.

C. The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

8.28.070. Prohibition of Smoking in Workplaces Enforcement and Penalties.

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars (\$25) for a first offense, fifty dollars (\$50) for a second offense and one hundred dollars (\$100) for a third or subsequent offense *within a twenty-four month period from the first offense*. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section II. of this chapter may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall inure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this chapter may *request that the Cambridge Public Health Department initiate an investigation.*

III

8.28.080 Definitions for Prohibition on Smoking in Public Places:

For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Agent or Business Agent: *An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.*

Cambridge Public Health Department: The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.

City: the City of Cambridge

Enclosed Area: *A space bounded by walls (with or without windows) from the floor to the ceiling and enclosed by doors. An enclosed area may include, but is not limited to, offices, rooms, and halls.*

Health Care Facility: Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.

Inspectional Services Department: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State

Building Code, zoning code and certain articles of the State Sanitary Code and Cambridge municipal code.

Mall: Any enclosed public walkway or hall area which serves to connect retail stores or offices.

Municipal Building Facility: Any building, or facility or vehicle owned, leased, operated or occupied by the municipality, including public parks, school buildings and grounds.

Municipal Vehicle: Any vehicle owned or leased by the municipality, and operated or occupied by employees, agents or contractors of the municipality.

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.

Designated Public park: Any outdoor playgrounds, fields, reservations, open space (excluding public streets and ways) and tot-lots, so-called, to which the public is invited and permitted. This includes, but is not limited to, any public parkgrounds adjacent to any public school or city operated building in the city of Cambridge and athletic fields.

Public place: An enclosed indoor area on public or private property where the public is invited or permitted, including but not limited to the following facilities: *healthcare facilities, malls, municipal facilities, public transportation vehicles, retail food stores, retail stores, educational facilities, libraries, museums, theaters, banks, laundromats, indoor sports arenas, auditoriums, all enclosed areas of inns/hotels/motels-lobbies and restrooms, including all guest rooms, auditoriums and any rooms or halls when used for a public meeting, public areas of banks and automatic banking lobbies, common areas of residential buildings, public restrooms, lobbies, staircases, waiting rooms, halls, exits, entrance ways, elevators accessible to the public and licensed child-care locations.*

Public transportation vehicle: Buses, taxis, and other means of transportation available to the general public while such means of transportation is operating within the boundaries of the city including indoor platforms by which such means of transportation may be accessed.

Retail Food Store: Any establishment selling food to the public for off premise consumption. "Retail Food Store" shall not include restaurants as defined in 8.28.110.

Retail Store: Any establishment selling goods, articles or personal services to the public, including such places as barbershops, hair salons, nail salons and tanning salons.

Smokeshop: Retail stores where the primary business is the sale of tobacco products;

Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.

Tobacco Product: Cigarettes, cigars, chewing tobacco, pipe tobacco, snuff, or tobacco in any of its forms.

8.28.090 Prohibition of Smoking in Public Places

A. Smoking Prohibited:

No person shall smoke nor shall any person be permitted to smoke in any *public place*.

~~or municipal facility, municipal vehicle, or public park.~~

B. Election for coverage by private facilities:

The owner, manager, or other person in charge of a building or facility not covered by paragraph A of Section I. of this regulation may elect to prohibit smoking.

C. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

D. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) Private residences, except when used as a licensed child care facility or health care facility;

(2) University Dormitory rooms occupied by one (1) or more students, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted by the University.

~~(3) Inn, hotel, motel, bed and breakfast, and lodging home rooms that are rented to guests that are designated as smoking rooms. Hotel and motel rooms rented to guests that are designated as "smoking rooms" may comprise no more than 25% of all rooms, leaving at least 75% smoke free at all times. A room so assigned shall have signs posted indicating that smoking is prohibited therein and shall have self-closing doors. No change in room designation shall take place without prior written approval by the Cambridge Public Health Department;~~

(34) Private or semiprivate rooms of nursing homes and long term care facilities, which is separately ventilated, occupied by one (1) or more patients, all of whom have requested in writing to be placed in rooms where smoking is permitted;

(45) Smokeshops provided such establishments prohibit entry to persons under the age of eighteen (18) at all times, and that such establishments conspicuously post signs at all entrances that warn patrons of the dangers of environmental tobacco smoke;

(56) Performers upon the stage, provided that the smoking is part of a theatrical production;

(67) Religious ceremonies where smoking is part of the ritual;

(78) The Middlesex County Jail/House of Corrections or places of incarceration/detention.

8.28.100. Violations and Penalties:

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars (\$25) for a first offense, fifty dollars (\$50) for a second offense and one hundred dollars (\$100) for a third or subsequent offense *within a twenty-four month period from the first offense*. Each day a violation occurs will be considered a separate

offense.

B. As an alternative to initiating criminal proceedings, violations of this Section III of this ordinance may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall inure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this section may *request that the Cambridge Public Health Department initiate an investigation.*

IV

8.28.110 Definitions for Prohibition on Smoking in Restaurants

Cambridge Public Health Department: The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.

City: the City of Cambridge

Enclosed Area: ~~A space bounded by walls (with or without windows) from the floor to the ceiling and enclosed by doors. An enclosed area may include, but is not limited to, offices, rooms, and halls.~~

Inspectional Services Department: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code, local zoning laws and certain articles of the State Sanitary Code and Cambridge municipal code.

License Commission: Composed of three commissioners under Chapter 95 of the Special Act of 1922; said commission regulates and issues licenses for restaurants, entertainment facilities and clubs within the City of Cambridge.

Restaurant: Any eating or entertainment establishment which possesses a Common Victualer License under the provisions of M.G.L. c. 140. *including but not limited to any coffee shop, cafeteria, sandwich shop, private and public school cafeteria, which gives or offer food for sale to the public, guests, or employees for on-premises consumption.*

Restaurant Premises shall include all outdoor and sidewalk seating areas. This includes those establishments that possess a common victualer license and/or an alcohol license as approved by the License Commission prior to 1986 and which is also approved by the License Commission.

~~**Restaurants where food is incidental to alcohol:** A restaurant which possesses a common victualer license and/or an alcohol license as approved by the License Commission prior to 1986 and which is also approved by the License Commission to have food incidental to the alcohol revenue during all hours of operation.~~

Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.

8.28.120 Prohibition of Smoking in Restaurants

A. Smoking Prohibited:

No person shall smoke nor shall any person be permitted to smoke in any restaurant, except as otherwise provided in paragraph C of this chapter.

B. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display at the entry(s) of the premises and upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

C. Exceptions:

~~Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:~~

~~(1) The outdoor or sidewalk seating portions of a restaurant provided that such outdoor seats are not enclosed except for the one side which adjoins the restaurant. *One side of said areas may adjoin the building, provided that the outdoor space and the indoor space are separated by a solid wall and/or self-closing doors such that smoke cannot enter the indoor space at any time.*~~

None

8.28.130. Violations and Penalties:

A. Any person who violates this chapter by (1) allowing smoking in a nonsmoking area or (2) allowing a ~~minor~~youth into an area restricted to ~~eighteen~~twenty-one and older shall be subject to a fine in an amount of twenty-five dollars (\$25) for a first offense, fifty dollars (\$50) for a second offense, one hundred dollars (\$100) for a third offense or subsequent offense *within a twenty-four month period from the first offense*. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of section 8.28.120 may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall inure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this section may *request that the Cambridge Public Health Department initiate an investigation.*

8.28.140 Invalidity of Provisions

In the event that any one or more of the phrases, sentences, clauses, or paragraphs

contained in this Ordinance shall be declared invalid by the final and unappealable order, decree or judgement of a court of competent jurisdiction, this Ordinance shall be construed as if it did not contain such phrases, sentences, clauses, or paragraphs.

8.28.150 Conflict with Other Laws and Regulations:

Notwithstanding the provisions of the foregoing ordinance, nothing in this ordinance shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire, health or regulations.

8.28.160 Implementation:

This revised ordinance will become effective October 1, 2003. An advisory committee will be created by the City Manager to develop recommendations for implementing and monitoring the tobacco ordinance. This committee will be composed of the following City staff: Deputy City Manager, Director of Economic Development at the Community Development Department, Police Commissioner, Commissioner of Inspectional Services, Chairman of the License Commission, Chief Public Health Officer, and City Solicitor. Additionally, there will be four members from the hospitality industry, including: Director of Tourism of the Cambridge Office for Tourism, one large business representative, one small business representative, and one alternate. The chair of the City Council's Economic Development Committee will also participate in the discussions. This committee will be co-chaired by the Deputy City Manager and the Chief Public Health Officer; will stay in effect for one year after passage of the ordinance; and will issue an implementation status report to the City Council at the end of the term.